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IN THE

Supreme Court of the United States

October Term, 1993

STATE OF NEW JERSEY,

Plaintiff,

against

STATE OF NEW YORK,

Defendant.

ANSWER

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Dated: July 12, 1994

No. 120, Original

IN THE

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OCTOBER TERM, 1993.

STATE OF NEW JERSEY,

Plaintiff,

against

STATE OF NEW YORK,

Defendant.

ANSWER

The State of New York, defendant, by its counsel, for its answer to the complaint, says:

1. It admits the allegations of paragraph 1 insofar as plaintiff purports to bring this action pursuant to Article III, Section 2, Clause 2 of the Constitution of the United States and 28 U.S.C. § 1251(a).

2. It admits the allegations of paragraph 2 insofar as Ellis Island was approximately three acres in size when the boundary between New York and New Jersey in the New York harbor area was established by compact in 1834, by which New York's jurisdiction over the full extent of the Island was preserved; the Island was subsequently augmented by artificial fill; the Island is currently approximately 27.5 acres in size; the whole of the Island lies within the territorial and sovereign jurisdiction of the State of New York. It denies the remainder of paragraph 2.

3. It admits the allegations of paragraph 3 that the opinion of the United States Court of Appeals for the Second Circuit in *Collins v Promark Products, Inc.*, 956 F2d 383 (2d Cir 1992) "reflects a determination that the whole of Ellis Island, including the lands artificially filled after 1834, is within the territory of New York and subject to its governmental jurisdiction" and the New York City Landmarks Preservation Commission held a hearing on November 10, 1992 on the question of whether the whole of Ellis Island should be declared a city landmark. It affirmatively states that the Landmarks Preservation Commission declared Ellis Island to be a New York City landmark on November 16, 1993. It denies the remainder of paragraph 3.

4. It denies having knowledge or information sufficient to form a belief as to the future actions of the National Park Service purported in paragraph 4. It respectfully refers the Court to the New York Public Authorities Law § 1675 *et seq.* for the true content of that statute. It denies the remainder of paragraph 4.

5. It admits the allegations of paragraph 5 insofar as New York, New Jersey, and the United States ratified a Compact

on the dates alleged. It respectfully refers the Court to the Compact for its true content. It denies the remainder of paragraph 5.

6. It denies the allegations of paragraph 6 and respectfully refers the Court to the entire Compact for its true content.

7. Paragraph 7 states legal conclusions to which no response is required. If a response is required it denies the allegations of paragraph 7 and respectfully refers the Court to the entire Compact for its true content.

8. It denies the allegations of paragraph 8.

9. It admits the allegations of paragraph 9, but denies the implication that the 1834 Compact in any way limited New York's jurisdiction over Ellis Island to the original dimensions of the Island.

10. It admits the allegations of paragraph 10 inasmuch as the United States Government purchased any and all title and interest held by New Jersey to certain submerged lands around Ellis Island; a deed conveying such title and interest was delivered by New Jersey to the United States on November 30, 1904; the *New York Times* published an article on July 19, 1904, addressing an application to enlarge Ellis Island. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in that article, or as to how the Island was "sometimes * * * referred to" by employees on the Island or the United States Government. It respectfully refers this Court to the text of the 1904 grant and the July 19, 1904, news article for the

true content of those respective documents. It denies the remainder of paragraph 10.

11. It denies the allegations of paragraph 11.

12. It denies the allegations of paragraph 12.

13. It denies each and every allegation of paragraph 13 and its subparagraphs, except as hereafter described:

13(a). It denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13(a).

13(b). It denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13(b).

13(c). It admits that the *New York Times* reported a letter from Dr. McLean to Director Downey in an article on July 21, 1955. It respectfully refers this Court to the text of the article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article.

13(d). It admits that the *Congressional Record* dated July 30, 1955 reports remarks of New Jersey Congressman Thomas J. Tumulty, and the *Congressional Record* dated August 1, 1955 reports remarks of New York Congressman George Klein. It respectfully refers this Court to the text of the *Congressional Record* for the true content and context of those remarks. It admits that Pub L No 341, c 779, 69 Stat 632 was approved on August 11, 1955.

13(e). It admits that the *New York Times* reported a trip to Ellis Island by various New Jersey political officials in an article on January 5, 1956. It respectfully refers this Court to the text of that article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article. It admits that the *Congressional Record* dated March 7, 1956, reports remarks of New York Congressman Irwin D. Davidson. It respectfully refers this Court to the text of the *Congressional Record* for the true content of those remarks. It denies knowledge or information sufficient to form a belief as to whether or for what purpose Jersey City Mayor Gangami travelled to Ellis Island in October 1962.

13(f). It admits that the *New York Times* reported a telegram communication between a New Jersey State Senator to New Jersey Senators and Congressmen in an article on January 3, 1958. It respectfully refers this Court to the text of that article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article.

13(g). It admits that *The Newark News* reported a proposed meeting and exchange between New Jersey and New York state officials in an article on July 22, 1960. It respectfully refers this Court to the text of that article for its true content. It denies knowledge or information sufficient to form a belief as to the accuracy of the facts reported in the article.

13(h). It admits that hearings on the disposal of Ellis Island were held before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations in September and December 1962, and that Jer-

sey City Corporation Counsel Meyer Pesin and others testified at that hearing on December 6, 1962. It denies that “[m]uch of the discussion by those who testified concerned ‘the question of jurisdiction over the island between the States of New York and New Jersey’ ”. It respectfully refers this Court to the transcript of the hearings of the Subcommittee for the true content of those hearings. It denies the implication that such testimony before the Subcommittee constituted action or an assertion of sovereignty by the State of New Jersey.

13(i). It admits that Jersey City enacted a zoning ordinance purportedly directed at Ellis Island on September 5, 1963, and that a copy of that proposed ordinance was submitted prior to its enactment to the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations on September 4, 1963. It denies that the ordinance “would control any development on the island if it were sold to private interests”. It denies the implication that the ordinance constituted action or an assertion of sovereignty by the State of New Jersey.

13(j). It admits that a complaint was filed in *Guarini v State of New York*, 215 NJ Super 426, 521 A2d 1362 (Chan Div 1986), *affd*, 215 NJ Super 293, 521 A2d 1294 (App Div 1986), *certif den*, 107 NJ 77, 526 A2d 157 (1987), *cert den*, 484 US 817 (1987). It denies that the sovereignty and jurisdiction of the State of New York and the State of New Jersey over Ellis Island were properly at issue in that case. It admits that New Jersey, a defendant in that action, filed an answer dated January 9, 1985. It respectfully refers the Court to the text of that answer for its true content and context. It denies that the position of New Jersey during that litigation “was consistent with” New Jersey’s allegation in

paragraph 2 of the Complaint. It respectfully refers this Court to the text of the decisions in *Guarini* for the true contents of the courts' findings in that matter.

13(k). It admits that Governors Cuomo and Kean signed a Memorandum of Understanding on June 23, 1986. It respectfully refers the Court to the text of the Memorandum for its true content. It admits that the Memorandum was incorporated by New Jersey into its laws in 1987 and that the Memorandum has not been incorporated into the laws of New York. It denies that the Memorandum was "only a partial attempted resolution of this dispute".

13(l). It admits that New Jersey and New York appeared as *amici curiae* before the Second Circuit in the *Collins v Promark Products* matter. It respectfully refers this Court to the text of the decision of the Second Circuit for its true content.

14. It admits the allegations of paragraph 14 insofar as New York State has always included the full extent of Ellis Island in its jurisdiction and in the jurisdiction of Manhattan for purposes of United States Congressional districts, New York State Senate and Assembly districts, and for other purposes. It denies that such inclusion was in any manner improper.

15. It denies the allegations of paragraph 15.

16. It admits the allegations of paragraph 16 insofar as New Jersey Attorney General Del Tufo wrote to New York Attorney General Robert Abrams on January 8, 1993. It denies that the letter "reiterat[ed] New Jersey's jurisdictional and

sovereignty claims over Ellis Island". It admits that Attorney General Abrams responded by letter dated February 8, 1993. It respectfully refers the Court to the text of those letters for their true contents. It admits that no proposals relating to the 1986 Memorandum of Understanding have been submitted to the New York State Legislature since 1988. It denies knowledge or information sufficient to form a belief as to communications to the New Jersey Historic Preservation Office. It denies knowledge or information sufficient to form a belief as to what Center Development Corporation "anticipates". It admits that the New York City Landmarks Preservation Commission declared Ellis Island to be a New York City landmark on November 16, 1993. It respectfully asserts that the allegations relating to the current legal status and effect of the 1986 Memorandum of Understanding are legal conclusions, to which no responses are required.

AND AS FOR ITS DEFENSES AND
AFFIRMATIVE DEFENSES HEREIN, THE STATE OF
NEW YORK ALLEGES:

FIRST

17. The plaintiff has failed to state a claim upon which relief can be granted.

SECOND

18. Plaintiff has not alleged sufficient facts to state a case or controversy warranting this Court's exercise of original jurisdiction.

THIRD

19. In September, 1833, commissioners representing New York and New Jersey entered into a compact to define the territorial limits and jurisdictional powers of each State in New York harbor. The agreement was ratified by the New York and New Jersey legislatures, and was approved by the U.S. Congress on June 28, 1834. Laws of New York 1834, Ch. 8; Laws of New Jersey 1833-34, p. 118; 4 Stat. 728, Ch. 126 ("1834 Compact").

20. While the provisions of the 1834 Compact established the general boundary line between the two States as the middle of New York Bay (Article I), that boundary was modified by several exceptions, both general and specific. Under Article Two, New York was to "* * * retain its present jurisdiction of and over Bedlow's and Ellis' islands * * *"; under Article Three, New York was to have "exclusive jurisdiction" over all waters of the bay and of the lands covered by said waters subject to certain rights of New Jersey. The Compact did not limit New York's sovereignty over Ellis Island to a fixed geographic dimension.

21. Under the terms of the 1834 Compact, New York State retained sovereignty and jurisdiction over the entirety of Ellis Island to the extent permitted by the federal govern-

ment. including sovereignty and jurisdiction over such additions to the Island that might subsequently be added by fill.

FOURTH

22. The State of New York realleges and incorporates herein each and every allegation set forth in paragraphs 19-21 hereof, as if fully set forth herein.

23. Throughout the history of Ellis Island, the full extent of the Island has been included within the jurisdiction of New York City and New York State for a wide variety of legal and civic purposes, including both State and Federal electoral and judicial districting. The Island's residents, including residents occupying its fill portion, have voted in New York's elections, been subject to New York's laws, been counted as New York residents in State and Federal censuses, and been generally treated as citizens of this State.

24. This exercise of sovereignty and jurisdiction over a well-populated area in New York Harbor was considerable and unconcealed, endured across several centuries, and included the whole of the Island at all times.

25. At no time during this period did the State of New Jersey seek to assert a meaningful sovereign claim over any portion of Ellis Island, despite many opportunities to do so. Rather, that State acquiesced in the exercise of sovereignty and jurisdiction by the State of New York.

26. By principles of prescription and acquiescence in the time-honored exercise of sovereignty and jurisdiction over the Island by the State of New York, New York currently has jurisdiction and sovereign authority over Ellis Island in

its entirety, including those parts of the Island enlarged by fill after 1890.

WHEREFORE, this Court should enter judgement dismissing the complaint, or declaring that the full extent of Ellis Island lies within the legal jurisdiction of the State of New York, and granting such other and further relief as the Court may deem proper.

Dated: Albany, New York
July 12, 1994

Respectfully submitted,

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